**Saskatchewan Financial Services Commission**
Pensions Division

# ENFORCEMENT OF MAINTENANCE ORDERS

## Introduction

The Maintenance Enforcement Office of Saskatchewan Justice collects court-ordered maintenance payments on behalf of Saskatchewan children and families. Maintenance Enforcement is given a variety of collection mechanisms including garnishment of wages, interception of federal government payments, seizure of property and suspension of driver's licences.

*The Enforcement of Maintenance Orders Act, 1997* authorizes the Director of the Maintenance Enforcement Office to attach pension funds as a last resort remedy for enforcing maintenance orders. *The Pension Benefits Act, 1992* also was amended to permit such an attachment. This bulletin explains the attachment process as well as some other issues.

The bulletin has no legal authority. *The Pension Benefits Act, 1992, The Pension Benefits Regulations, 1993, The Enforcement of Maintenance Orders Act, 1997* and *The Enforcement of Maintenance Orders Regulations, 1998* should be referred to for specific requirements. Please note, in particular, section 50 of *The Pension Benefits Act, 1992* and sections 35 to 40 of *The Enforcement of Maintenance Orders Act, 1997*.

## Conditions Necessary for an Attachment

Several conditions must exist before the Maintenance Enforcement Office may attach pension entitlements:

1. The respondent must be in arrears in an amount not less than 3 months' maintenance payments. "Respondent" means the person who has an obligation to pay a maintenance order.

2. The respondent must be neither a member in the pension plan nor a former member in receipt of a pension from the plan. An attachment, therefore, is limited to the pension entitlements of former members who are not yet in receipt of their pensions. Members and pensioners are excluded because both have sources of income (wages and pensions, respectively) which can be garnisheed by the Maintenance Enforcement Office.

3. In the opinion of the Director of Maintenance Enforcement, all reasonable steps have been taken to enforce the maintenance order. Attachment must be a last resort.

4. The Director of Maintenance Enforcement has served the pension plan administrator and the respondent with a notice of the Director's intention to attach the pension entitlement.

5. The respondent has not made arrangements to fulfil the obligation under the maintenance order, to the satisfaction of the Director, prior to the service of the notice of attachment.

## The Attachment Process

### 1. Notice of the Director's Intention to Attach

To initiate an attachment, the Director of Maintenance Enforcement must send a notice of the Director's intention to attach the respondent's pension entitlement to the pension plan administrator and the respondent.

The "Notice to the Administrator of Intention to Attach Pension Entitlement" (copy attached) directs the administrator to provide the Director and the respondent with the following information within 30 days of the receipt of the notice:

(a) the most recent address of the respondent in the administrator's records;

(b) confirmation that:

  (i) neither the respondent nor the respondent's employer on his or her behalf is currently making contributions to the pension plan, and

  (ii) the respondent is not receiving a pension benefit from the pension plan;

(c) the value of the respondent's pension entitlement:

  (i) as at a date provided by the Director on the notice,

  (ii) whether or not the respondent could actually transfer that amount from the pension plan, and

  (iii) calculated in accordance with section 24 of *The Pension Benefits Regulations, 1993*.

An attachment can proceed even if the respondent does not have right to transfer money from the pension plan under a portability provision. As well, the amount of the pension entitlement which may be attached is not limited to the amount which may be transferred where a transfer deficiency exists per section 28 of *The Pension Benefits Regulations, 1993*.

Section 24 of *The Pension Benefits Regulations, 1993* prescribes the method for calculating the commuted value of a pension entitlement. With respect to a defined benefit provision, the value of benefits must be determined in accordance with the Canadian Institute of Actuaries' Recommendations for the Computation of Transfer Values from Registered Pension Plans. With respect to a defined contribution provision, the value of benefits must be determined on the basis of the contributions made by or for the credit of the respondent and interest and any other amounts allocated with respect to the respondent.

The "Notice to Respondent of Intention to Attach Pension Entitlement" (copy attached) informs the respondent that he or she can apply to the court within 30 days of the receipt of the information from the pension plan administrator for an order that his or her pension entitlement not be attached. The respondent also is informed that an attachment would result in a reduction of his or her pension entitlement of administrative costs, income tax and the amount of the attachment itself. A copy of the Notice to Administrator of Intention to Attach Pension Entitlement is attached to the respondent's notice.

## 2. Waiting Period

Where a pension plan administrator has been served with a Notice to Administrator of Intention to Attach Pension Entitlement, the administrator cannot pay out or transfer any of the respondent's pension entitlement until 60 days after:

(a) if no application is made to court by the respondent challenging the attachment, the date that the Director of Maintenance Enforcement receives the information requested from the plan administrator on the Notice to Administrator of Intention to Attach Pension Entitlement form;

(b) if the respondent applies to the court, the date that the court orders the attachment of the respondent's pension entitlement.

On application by the respondent, the court may order that the respondent's pension entitlement not be attached because the respondent is not at least 3 months in arrears or the respondent is an active member of the pension plan or the respondent is a retired member of the pension plan. A respondent applying to court must serve the Director of Maintenance Enforcement and the plan administrator with notice of the application.

## 3. Attachment of Pension Entitlement

If the respondent does not apply to the courts or has his or her application dismissed, the Director of Maintenance Enforcement will serve the pension plan administrator with a "Notice of Attachment of Pension Entitlement" (copy attached). The administrator is required to deliver, personally or by ordinary mail, a copy of the notice to the respondent.

The notice will direct the administrator to deduct and remit an amount specified in the notice to the Maintenance Enforcement Office. The notice also permits the administrator to deduct from the respondent's pension entitlement an amount to reimburse the administrator for costs incurred in complying with the order and income tax.

A plan administrator may recover, by way of deduction from the respondent's pension entitlement, costs incurred in complying with the notice. The amount of the recovery must reasonably represent the costs actually incurred and cannot exceed $500, respecting a defined benefit plan, and $250, respecting a defined contribution plan.

In determining the amount of income tax to be withheld, the administrator must gross up the amount of attachment using the appropriate withholding rate in order to be able to pay the required amount of the attachment net of income tax. For example, if the attachment is in the amount of $10,000, then $2,500 ([$10,000/.8] - $10,000) would be withheld and remitted to the Canada Customs and Revenue Agency. The respondent would be required to declare the attachment amount as income in the year of payment and his or her pension entitlement would be reduced by $12,500 plus administrative expenses.

The administrator must comply with the notice within 45 days after receiving the notice.

In no case can the amount of the attachment, plus the withholding tax, plus the expense deduction, exceed the total commuted value of the respondent's pension entitlement. However, the whole of the commuted value of a former member's pension entitlement may be attached. In other words, an attachment is limited to the lessor of the amount demanded by the attachment notice and the remainder of the commuted value of the former member's pension benefits after accounting for income tax and administrator's costs.

After the attachment, the former member has no further claim or entitlement to any pension or other benefit respecting the amount attached. The pension entitlement which remains payable to the former member must be calculated on the basis of the commuted value of his or her pension after the attachment.

Legislation ensures that neither the administrator nor the plan is liable to any person by reason of having made payment pursuant to an attachment.

### Garnishment

Section 50 of *The Pension Benefits Act, 1992* also permits the garnishment of a pension in payment for purposes of enforcing a maintenance order. Enforcement by garnishment is covered in Part III of *The Enforcement of Maintenance Orders Act, 1997*. Generally speaking, a garnishment will require the pension plan administrator to retain a portion of the respondent's pension each time the pension is paid and to surrender the sum to the Maintenance Enforcement Office.

### Locked-in Retirement Account (LIRA) and Registered Retirement Income Fund (RRIF)

Money in a LIRA or a RRIF is subject to attachment in the manner described above for pension plans. The financial or other institution that issues, underwrites or is a depository of the LIRA or RRIF is responsible for the duties described for a pension plan administrator.

For additional information please contact:

Pensions Division
Saskatchewan Financial Services Commission
Suite 601, 1919 Saskatchewan Drive
REGINA SK S4P 4H2

Tel: (306) 787-7650
Fax: (306) 787-9006

Web site: www.sfsc.gov.sk.ca

Copies of legislation can be purchased from:

Queen's Printer
Saskatchewan Justice
B19 – 3085 Albert Street
REGINA, Saskatchewan
S4S 0B1

Tel: (306) 787-6894
Fax: (306) 798-0835

Web site: www.qp.gov.sk.ca

Prepared: August 2004

**Notice to Administrator of Intention to Attach Pension Entitlement**

**TO:**

*(Name and address of pension administrator)*

TAKE NOTICE THAT:

1. This notice is served on you pursuant to section 37 of *The Enforcement of Maintenance Orders Act, 1997* with respect to the respondent, _____, who is alleged to have a
*(Respondent's name)*
pension entitlement in a pension plan that you administer. Sections 35 to 40 of *The Enforcement of Maintenance Orders Act, 1997* authorize the Director of Maintenance Enforcement to attach the respondent's pension entitlement and apply the money received to the respondent's obligations under a maintenance order or agreement.

2. If the respondent does not have a pension entitlement in a pension plan that you administer, you shall provide a written statement disputing the proposed attachment to the Director of Maintenance Enforcement within 30 days after you receive this notice. A blank Notice of Dispute is provided for your use.

3. This Notice of Intention requires you to provide the following information:

(a) the most recent address for the respondent in your records;

(b) confirmation that:

(i) neither the respondent nor the respondent's employer on his or her behalf is currently making contributions to the pension plan that you administer; and

(ii) the respondent is not receiving a pension benefit from the pension plan that you administer;

(c) the value of the respondent's pension entitlement, as at the end of _____, whether or
*(Month and year)*
not the respondent could actually transfer that amount from the pension plan. The value of the pension entitlement is to be calculated according to section 24 of *The Pension Benefits Regulations, 1993.*

4. You shall provide the information described in paragraph 3 to the Director of Maintenance Enforcement within 30 days after you receive this notice. The address of the Director of Maintenance Enforcement is as follows:

Maintenance Enforcement Office
P.O. Box 2077
Regina, Saskatchewan
S4P 4E8

5. You shall also provide the information described in paragraph 3 to the respondent within 30 days after you receive this notice. You may provide the information to the respondent at the most recent address for the respondent in your records. The Director of Maintenance Enforcement may attach the respondent's pension entitlement even if you fail to provide the information to the respondent.

6. Subsection 38(2) of *The Enforcement of Maintenance Orders Act, 1997* prohibits you from paying out any of the respondent's pension entitlement at the respondent's direction, until 60 days after:

(a) the date the Director of Maintenance Enforcement receives the information in paragraph 3; or

(b) if the respondent serves you with a notice of application to the court to dispute this attachment, the date the court orders that the respondent's pension entitlement may be attached.

DATED at Regina, Saskatchewan, _____.
*(Date)*

_____
*(Signature of Director of Maintenance Enforcement)*

**Notice of Dispute**

TAKE NOTICE THAT the above-named pension administrator disputes the Notice to Administrator of Intention to Attach Pension Entitlement served on the pension administrator for the following reason:

_____
_____
_____
_____
_____
_____
_____
_____
_____

_____ _____

*(Date)* *(Signature of pension administrator)*

_____

*(Name)*

_____

*(Address)*

_____

*(Telephone)*

**Notice to Respondent of Intention to Attach Pension Entitlement**

**TO:**
*(Respondent's name)*

TAKE NOTICE THAT:

1. This notice is served on you pursuant to section 37 of *The Enforcement of Maintenance Orders Act, 1997*. Sections 35 to 40 of *The Enforcement of Maintenance Orders Act, 1997* authorize the Director of Maintenance Enforcement to attach your pension entitlement to enforce your obligation to _____ under a
*(Claimant)*
maintenance order or agreement dated _____.
*(Date)*

2. A copy of the Notice to Administrator of Intention to Attach Pension Entitlement, served on _____, is attached to this notice. Under that notice, the pension administrator
*(Pension administrator)*
has 30 days to provide information regarding your pension entitlement to the Director of Maintenance Enforcement and yourself. The notice also prohibits the pension administrator from paying out any of your pension entitlement at your request.

3. This notice is to advise you that the Director of Maintenance Enforcement may attach your pension entitlement once the Director receives the required information from the pension administrator. To prevent the attachment, you must immediately contact the Director and make alternative arrangements to make your maintenance payments.

4. You may apply to the court for an order that your pension entitlement not be attached. To do so, you must apply to the court within 30 days after you receive the information respecting your pension entitlement from the pension administrator. You shall serve both the Director of Maintenance Enforcement and the pension administrator with notice of your application.

5. The court may order the Director of Maintenance Enforcement not to attach your pension entitlement if you demonstrate one of the following:

(a) that you are less than three months in arrears on your maintenance payments;

(b) that either you or your employer on your behalf is currently making contributions to the pension plan that the Director of Maintenance Enforcement proposes to attach;

(c) that you are receiving a pension benefit from the pension plan.

6. If the Director of Maintenance Enforcement attaches your pension entitlement, you will be responsible for the following:

(a) the pension administrator's costs in an amount not exceeding $250 (for a defined contribution pension plan) or $500 (for a defined benefit pension plan);

(b) income tax consequences associated with the attachment of your pension entitlement;

(c) a reduction in your pension benefits resulting from the attachment of your pension entitlement.

DATED at Regina, Saskatchewan, _____.
*(Date)*

_____
*(Signature of Director of Maintenance Enforcement)*

**Notice of Attachment of Pension Entitlement**

**TO:**
*(Name and address of pension administrator)*

TAKE NOTICE THAT:

1. This notice is served on you pursuant to section 40 of *The Enforcement of Maintenance Orders Act, 1997* with respect to the respondent, _____, who owes payments to the claimant, _____
*(Name)* *(Name)*
under a maintenance order or agreement.

Sections 35 to 40 of *The Enforcement of Maintenance Orders Act, 1997* authorize the Director of Maintenance Enforcement to attach the respondent's pension entitlement and apply the money received to the respondent's obligations.

2. If the respondent does not have a pension entitlement in a pension plan that you administer, you shall provide a written statement disputing your liability to the Director of Maintenance Enforcement within 45 days after you receive this notice. A blank Notice of Dispute is provided for your use.

3. According to the information provided by you on _____, under
*(Date information was received)*
the Notice to Administrator of Intention to Attach Pension Entitlement, the respondent's pension entitlement is $_____ as at _____.
*(Amount)* *(Date)*

4. Within 45 days after you receive this notice, you shall deduct the following from the respondent's pension entitlement:

(a) an amount to reimburse you for the costs of complying with this notice to a maximum of $250 (for a defined contribution pension plan) or $500 (for a defined benefit pension plan);

(b) the amount of withholding tax that you are required by law to remit to Revenue Canada;

(c) the lesser of $_____ and the remainder of the respondent's pension entitlement.

5. If you fail to comply with this notice, judgment may be entered against you for the amount in default, without further notice to you.

6. You shall forward the moneys deducted pursuant to paragraph 4(c) by cheque or money order payable to _____ at the following address:
*(Claimant's name)*

Maintenance Enforcement Office
P.O. Box 2077
Regina, Saskatchewan
S4P 4E8

7. An extra copy of this notice is provided and you shall deliver or mail it to the respondent as soon as possible. You may deliver the notice to the most recent address for the respondent in your records.

DATED at Regina, Saskatchewan, _____.
(Date)

_____
*(Signature of Director of Maintenance Enforcement)*

**Notice of Dispute**

TAKE NOTICE THAT the above-named pension administrator disputes the Notice of Attachment of Pension Entitlement served on the pension administrator for the following reason:

_____

_____

_____

_____

_____

_____

_____

_____ _____

*(Date)* *(Signature of pension administrator)*

_____

*(Name)*

_____

*(Address)*

_____

*(Telephone)*